

## Nuisance

Private Nuisance – a tort claim where someone's use or enjoyment of their property is affected by the unreasonable behaviour of a neighbour

Parties to the claim	Claimant	Originally must have an interest in the land. In <b>Hunter</b> it was said that only those who had an interest in the land and not members of the family who lived in the property have a claim. However, in <b>McKenna v British Aluminium (2002)</b> over 30 Cs, including children who had no interest in the land were affected and able to claim for noise and fumes that came from D's factory.	Hunter v Canary Wharf Ltd (1997) McKenna v British Aluminium (2002)
	Defendant	Usually the occupier of the land. The D does not have to create the nuisance. It can even occur naturally. Once the D is aware of the danger and fails to do anything about it they can be liable.	Sedleigh Denfield v O'Callaghan (1940) Leaky v National Trust (1980) Anthony v The Coal Authority (2005)
The elements of the offence	Unlawful	Interference alone is not enough. C must prove it is unlawful. Here unlawful does not mean illegal but means unreasonable. The courts will also attempt to balance conflicting interests and the idea of give and take between neighbours.	
	Indirect Interference	<p>E.g. – Loss of amenity Fumes drifting from neighbouring land Smells from farm animals Noise – children's playground/ gunfire/ motor racing circuit E.g. Material damage Vibrations from industrial machinery Hot air rising from other premises Oily smuts from chimneys Fire Cricket balls being hit into a garden.</p> <p>Running a brothel (Cs saw prostitutes coming and going from the house) was a nuisance</p> <p>However – interference with TV signal will not give rise to a claim in nuisance</p>	Hunter v Canary Wharf Ltd (1997)
	Factors of reasonableness	<b>Locality</b> - Depends on the context of the location. What is reasonable in Bermondsey will not be reasonable in Belgravia	Sturges v Bridgman (1879)
		<b>Duration of the interference</b> – to be unreasonable the interference is likely to continuous and happen at unreasonable times of the day. A one off party is unlikely to be a nuisance but regular late and noisy parties. However, in Kimbolton a one off 20 minute event was held to be a nuisance.	Crown River Cruises v Kimbolton (1996) De Keyser's Royal Hotel v Spicer Bros (1914)
		<b>Sensitivity of C</b> - If C (or something on their land paper/ flowers etc) is particular sensitive then the action may not be nuisance. However, the test has moved away from one of sensitivity to reasonable foreseeability.	Robinson v Kilvert (1889) Network Rail Infrastructure v Morris (2004)
		<b>Malice</b> – A deliberately harmful act will be considered to malicious and therefore a nuisance.	Hollywood Silver Fox Farm v Emmett (1936) Christie v Davey (1893)
		<b>Social Benefit</b> – If the D is providing a benefit to the public then the court may consider the actions reasonable. <b>This is an example of balancing conflicting interests and could be used as an example in a law and society question.</b>	Miller v Jackson (1977) Coventry v Lawrence (2014)
Defences	Prescription	If the nuisance has carried in for 20 years without complaint the D may be said to have a prescriptive right to continue. Linked to this consent can also apply	Sturges v Bridgman (1879)
	Moving to the nuisance	Coming to the nuisance is no defence	Sturges v Bridgman (1879) Miller v Jackson (1977)
	Statutory Authority	If the nuisance is allowed by statute/ planning permission there can be a defence. However, if the planning permission does not change the nature of the neighbourhood, it will not operate as a defence	Allen v Gulf Oil Refining (1981) Gillingham BC v Medway (Chatham) Dock Co. (1993) Wheeler v Saunders (1996) Coventry v Lawrence (2014)

## Remedies

Usually an injunction but D can argue that an award for damages is more appropriate